

2005

Dennis Fernandez v. Ogden City : Brief of Appellant

Utah Court of Appeals

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Jason Schatz; Schatz & Anderson; Attorney for Appellant/Petitioner.

Recommended Citation

Brief of Appellant, *Fernandez v. Ogden City*, No. 20050105 (Utah Court of Appeals, 2005).
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IN THE UTAH COURT OF APPEALS

Dennis Fernandez, : Appellate Case No. 20050105 -CA

Defendant/Appellant :

v. : Priority No. : 2

Ogden City, :

Plaintiff/ Appellee. .

BRIEF OF APPELLANT/DEFENDANT

This Appeal is from the Final Judgments of the Second District Court, entered on January 7, 2005, denying the Defendant's Renewed Demand for Jury Trial and Motion to Dismiss/Transfer, and his subsequent convictions for Simple Assault and Domestic Violence in the Presence of a Child entered following the Bench Trial on January 7, 2005.

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ORAL ARGUMENT REQUESTED

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IN THE UTAH COURT OF APPEALS

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Defendant/Appellant :

v. : Priority No. : 2

Ogden City, :

Plaintiff/ Appellee. :

BRIEF OF APPELLANT/DEFENDANT

STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction in this matter pursuant to U.C.A. 77-18a-1 and U.C.A. 78-2a-3(e) (1953 as amended).

STATEMENT OF ISSUE AND STANDARD OF REVIEW

Issue 1: Whether Utah's statutory scheme governing the jurisdiction of District Courts and Justice Courts violates a Defendant's Equal Protection Rights pursuant to Article I, Section 24 of the Utah State Constitution and the Fourteenth Amendment to the United States Constitution. In the present case whether the filing of the Defendant's case which involved only Class B Misdemeanors or less in the Second District Court rather than the Weber County Justice Court violated the Defendant's Equal Protection Rights.

Standard of Review: "Constitutional challenges to statutes present questions of law, which we review for correctness." *Provo City Corp. v. Thompson*, 2004 UT 14, ¶ 5, 86 P.3d 735

Issue 2: Whether the provisions of Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure eliminating the right to a jury trial in the case of an Infraction violate the Utah State Constitution and its guarantee of a criminal defendant's right to a jury trial in criminal prosecutions. In the present case whether the court erred in denying the Defendant's Renewed Demand for Jury Trial and proceeding with a Bench Trial despite the Defendant's request for Jury Trial.

Standard of Review: "Constitutional challenges to statutes present questions of law, which we review for correctness." *Provo City Corp. v. Thompson*, 2004 UT 14, ¶ 5, 86 P.3d 735

PRESERVATION OF ISSUE FOR APPEAL: Counsel for the Defendant raised the above stated issues in the Defendant's Motion to Dismiss and Renewed Demand for Jury Trial, both of which were filed with the Second District Court prior to the Bench Trial in this matter on January 7, 2005, and subsequently denied by the trial court, Judge Ernie Jones. (See attached copies of Defendant's Motion to Dismiss and Renewed Demand for Jury Trial)

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

a) Constitutional Provisions:

Utah State Constitution-Article 1, Section 12

Utah State Constitution- Article I, Section 24

United States Constituion-14th Amendment

b) Statutes:

Utah Code Ann. § 77-1-6(2)(e)

Utah Code Ann. § 77-25-2

Utah Code Ann. § 78-5-103

Utah Code Ann. § 78-5-104

c) Rules:

Rule 17(d) of the Utah Rules of Criminal Procedure

STATEMENT OF THE CASE

Nature of the Case:

In this appeal, the Appellant seeks a reversal of order of the Second District Court, entered on January 7, 2005, denying the Defendant's Renewed Demand for Jury Trial and Motion to Dismiss/Transfer, and his subsequent convictions for Simple Assault and Domestic Violence in the Presence of a Child entered following the Bench Trial on January 7, 2005. It is the position of the Defendant that the trial court erred in denying the Defendant's Motion to Dismiss/Transfer in that the proper court in which to file the

Defendant's case was the Weber County Justice Court and not the Second District Court. Further, it is also the position of the defendant that he has a constitutional right to a Jury Trial under the Utah State Constitution and that the court erred and violated that right by denying his Renewed Demand for Jury Trial and proceeding with a bench trial instead.

Course of Proceedings Below:

The Defendant was arrested at approximately 1:30 a.m. on May 10, 2004. He was later released from jail on May 11, 2004, after posting bond. The Defendant was originally charged on May 10, 2004, by Formal Information filed by the Ogden City Prosecutor's Office, with 1 count of Simple Assault, a Class B Misdemeanor, 1 count of Domestic Violence in the Presence of a Child, a Class B Misdemeanor, and 1 count of Intoxication, a Class C Misdemeanor. At the Pre-trial Conference in this matter, this case was set for a Jury Trial on January 7, 2005. On January 5th, 2005, the Ogden City Prosecutor, filed an Amended Information amending all 3 counts to Infractions and requested that the court strike the jury trial set for January 7, 2004, and hold a bench trial instead. Prior to the bench trial the Defendant filed a Renewed Demand for Jury Trial asking that the court proceed with the Jury Trial as scheduled and a Motion to Dismiss/Transfer. The court denied both of the Defendant's Motion to Dismiss/Transfer and Renewed Demand for Jury Trial and proceeded with a Bench Trial on January 7, 2005. At the conclusion of the Bench Trial, the court found the Defendant guilty of Simple Assault and Domestic Violence in the Presence of a Child, both Infractions as

amended.

SUMMARY OF FACTS RELEVANT TO ISSUE ON APPEAL

Because this appeal involves only challenges to the constitutionality of the statutes or rules involved, this court's determination would not be aided by the facts presented at trial as the motions made and argued were not based on any facts presented at trial. As such, the Defendant has not requested that a transcript be prepared in this case.

However, the Defendant does point out the fact that the Defendant was arrested and taken to the Weber County Jail on May 10, 2004. That he was held in custody on the charges involved here until May 11, 2004, at which time he was able to secure his release by posting bail.

SUMMARY OF THE ARGUMENTS

It is the position of the Appellant that the proper venue for this case would have been the Weber County Justice Court and that the District Court Judge erred in denying the Defendant's Motion to Dismiss/Transfer his case to the Weber County Justice Court which had the authority pursuant to Utah Law to exercise jurisdiction in this case. It is also the Defendant's position that Utah's statutory scheme of jurisdiction of Justice Court's and District Court's as currently being applied in several jurisdictions in Utah, including Ogden, violates the Defendant's Equal Protection Rights pursuant to Article I, Section 24 of the Utah State Constitution and the Fourteenth Amendment to the United States Constitution. Ogden like several other cities in Utah have not established Justice

Court's of their own and instead are filing cases involving Class B Misdemeanors or less in their local District Courts rather than the Justice Court in their county. As such, Defendants who are charged with the same crime are having their cases filed in different "courts" where they enjoy substantially varying rights of appellate or de novo review based solely on the location of their arrest and whether the case originated in a Justice Court or District Court.

It is also the Defendant's position that the court violated the Defendant's Constitutional Right to a Jury Trial guaranteed by the Utah State Constitution when it denied his Renewed Demand for a Jury Trial and proceeded with a bench trial and that Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure unconstitutionally seek to eliminate the right to a jury trial in the case of an Infraction.

ARGUMENT

I. UTAH'S STATUTORY SCHEME OF JURISDICTION OF JUSTICE COURTS AND DISTRICT COURTS AS APPLIED VIOLATED THE DEFENDANT'S EQUAL PROTECTION RIGHTS

It is the position of the Defendant that although the District Courts in the State of Utah have jurisdiction to hear cases involving offenses classified as Class B or Class C Misdemeanors and infractions, the proper court in which to file the above entitled case was the Weber County Justice Court.

Pursuant to Utah's statutory scheme of District and Justice Courts, cases involving offenses classified as class B Misdemeanors or less are to be filed in the Justice Courts.

Utah Code § 77-25-2 states that “Any prosecution by information, except in the case of a felony or class A Misdemeanor, *shall be commenced before a magistrate in the precinct of the county or municipality* where the offense was alleged to have been committed, except as otherwise provided by law.” (emphasis added) Furthermore, Utah Code § 78-5-104 states that “(1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed *within their territorial jurisdiction*, except those offense over which the juvenile court has exclusive jurisdiction.” (emphasis added) Clearly a justice court would have original jurisdiction to hear this case because the offenses alleged in this case were originally filed as Class B and C misdemeanors (All charges have since been amended to Infractions pursuant to the amended Information filed on January 5, 2005, by the Ogden City Prosecutor’s Office) and therefore fall under the jurisdiction of the justice courts as set forth in Utah Code § 78-5-104 and pursuant to Utah Code § 77-25-2 the case should be filed in a justice court.

Although the City of Ogden has not established a justice court, there is available a justice court with proper jurisdiction to hear this case. Utah Code § 78-5-103 defines the territorial jurisdiction of the justice courts as follows: “(1) The territorial jurisdiction of county justice courts extends to the limits of the precinct for which the justice court is created and *includes all cities or towns within the precinct, except cities where a municipal justice court exists.*”(emphasis added) Pursuant to this statute, the jurisdiction of the Weber County Justice court extends to all cities or towns in Weber County, including Ogden, and since Ogden has not established a municipal justice court, the

Weber County Justice Court maintains its jurisdiction over misdemeanors cases, Class B or less, alleged to have been committed in Ogden City.

The statutory scheme of jurisdiction of the justice courts and district courts as outlined above and the difference in the appellate rights extended to Defendants whose cases begin in Justice Courts versus the appellate rights extended to criminal Defendants whose cases begin in the District Court violates both Article I, Section 24 of the Utah State Constitution and the Fourteenth Amendment to the United States Constitution.

Article I, Section 24 of the Utah State Constitution states: “All laws of a general nature shall have uniform operation.” Utah Const. art. I, § 24. The Fourteenth Amendment to the United States Constitution prohibits a state from enacting laws that deny “any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. “despite their dissimilar language, these two constitutional provisions ‘embody the same general principle: *persons similarly situated should be treated similarly*, and persons in different circumstances should not be treated as if their circumstances were the same.” Gallivan v. Walker 54 P.3d 1069 (Utah 2002)(citations omitted)(emphasis added).

Under Utah law a defendant tried in a Justice Court has different appellate rights than a defendant tried in a District Court. The right of appeal from a Justice Court conviction is limited to a Trial de Novo in the district court unless the Defendant is challenging the constitutionality of a statute or ordinance. Whereas, the right to appeal from a conviction in district court does not allow the Defendant to relitigate the facts of

the case but does allow the Defendant to have his case reviewed by the Utah Court of Appeals or Utah Supreme Court based on the record established the district court. There are some benefits and disadvantages of both scenarios. For a Defendant in Justice Court, he gets a second chance to relitigate the facts of his case on appeal to the District Court “de novo.” However, this also means that a prosecutor who presents a case poorly in justice court also has an opportunity to relitigate the facts at a hearing de novo after having had a chance to preview the Defendant’s case and his defense in the Justice Court. Likewise, a Defendant in Justice Court does not have an effective and efficient opportunity to appeal his case to a true appellate court in order to get a ruling on the interpretation of a statute since his ability to appeal to the appellate courts is limited only to situations where he is challenging the overall constitutionality of the statute. To the contrary, a Defendant whose case is filed in District Court only gets one bite at the apple so to speak since he does not have the ability to relitigate the facts of his case or to have a second jury trial like a Defendant whose case starts in Justice Court, goes to trial is convicted and appeals to District where he is allowed a second trial “de novo.” But the Defendant in District court does have a way to efficiently and effectively appeal to the appellate courts on any issue appropriate for review not just the constitutionality of a statute or ordinance.

Clearly there are some vast differences in the rights of Defendants whose cases are filed in the Justice Court versus those whose cases are filed in District, particularly their “appellate right” as outlined above. This is particularly troublesome in city’s such as

Ogden, Orem, and Layton where the cities have not established their own justice courts therefore cases involving only Class B Misdemeanors or less are being filed in their local District Courts, such was the case here, subjecting those defendants to different rights from others who commit similar offense in cities who have established their own justice courts.

Thus, under the current statutory scheme and the manner in which it is being applied in cities such as Ogden, Orem and Layton, a Defendant's "right to appeal" is effectively being determined by the location of his arrest and whether or not the municipality in which the offense occurred has established a justice court. The current statutory scheme in Utah provides that cases involving Class B misdemeanors or less should be filed in a Justice Court. However, in cases where the offense is committed in a municipality which has not established a justice court, the district court sitting in that municipality maintains jurisdiction to hear the case even if it involves only a Class B Misdemeanor offense. For example, under the current statutory scheme, a Utah citizen who commits an offense of Assault, a Class B Misdemeanor, within the city limits of Salt Lake City would have his case filed in the Salt Lake City Justice Court, and if convicted would have a right to a Trial de Novo in the Third District Court. However, as was done in this case, a Utah citizen who commits an offense of Assault, a Class B Misdemeanor, in Ogden, which has not established a municipal justice court, would have his case filed in the Second District Court, and would not have a right to a Trial de Novo but rather would be entitled to appeal his case to the Utah Court of Appeals.

As such, this statutory scheme as it was applied in this case violated the Defendant's Constitutional Rights pursuant to Article I, Section 24 of the Utah State Constitution and the Fourteenth Amendment to the United States Constitution in that it treats "similarly situated" Utah citizens differently based entirely on the location of where their offense was committed.

II. THE DEFENDANT WAS UNCONSTITUTIONALLY DENIED HIS RIGHT UNDER THE UTAH STATE CONSTITUTION TO A TRIAL BY JURY

In recent years the Utah Supreme Court has interpreted the Utah State Constitution to provide criminal defendants with more expansive protections than those guaranteed by the United States Constitution. See State v. Larocco, 794 P.2d 460 (Utah 1990), State v. Trafny, 799 P.2d 704 (Utah 1990)(the Utah Supreme Court conducted an analysis of the Defendant's double jeopardy argument solely under the Utah State Constitution), State v. Thompson, 810 P.2d 415 (Utah 1991)(ruling that under Utah State Constitution a person has an expectation of privacy in bank records held by a third party), and Sims v. Collection Division of Utah State Tax Comm's, 841 P.2d 6 (Utah 1992)(court struck down a suspicionless investigatory roadblock and applied exclusionary rule ruling that illegal obtained evidence could not be used in quasi-criminal cases).

More recently, in its ruling in the case of Brigham City v. Stuart, 2005 UT 13, 519 Utah Adv. Rep 17, the court criticized defense attorney's failures to raise state

constitutional arguments and invited attorneys to raise state constitutional arguments implying that they had a duty to do so.

The reluctance of litigants to take up and develop a state constitutional analysis is surprising in light of our repeated statements that federal Fourth Amendment protections may differ from those guaranteed our citizens by our state constitution. *See, e.g., State v. DeBooy*, 2000 UT 32, ¶ 12, 996 P.2d 546 ("While this court's interpretation of article I, section 14 has often paralleled the United States Supreme Court's interpretation of the Fourth Amendment, we have stated that we will not hesitate to give the Utah Constitution a different construction where doing so will more appropriately protect the rights of this state's citizens."); *State v. Watts*, 750 P.2d 1219, 1221 n. 8 (Utah 1988) ("[C]hoosing to give the Utah Constitution a somewhat different construction may prove to be an appropriate method for insulating this state's citizens from the vagaries of inconsistent interpretations given to the fourth amendment by the federal courts."); *State v. Hygh*, 711 P.2d 264, 271-73 (Utah 1985) (Zimmerman, J., concurring) (stating that state and federal search and seizure law are not identical).

In *Brake*, for example, we took issue with the usefulness of federal Fourth Amendment jurisprudence concerning the police officer safety justification for warrantless automobile searches. *Brake*, 2004 UT 95 at ¶¶ 27-31, 103 P.3d 699. Our reasoning in *Brake* emanated to a great extent from cases in which we concluded that article I, section 14 of the Utah Constitution provides a greater expectation of privacy than the Fourth Amendment as interpreted by the United States Supreme Court.

Where the parties do not raise or adequately brief state constitutional issues, our holdings become inevitably contingent. They carry within them an implicit qualification that if properly invited to intervene, our state's Declaration of Rights might change the result and impose different demands on police officers and others who in a very real sense are the everyday guardians of constitutional guarantees against unreasonable searches and seizures.

In the not so distant history of this court, we engaged in an ongoing and robust discussion over whether and to what extent we should defer to the federal courts when called upon to interpret provisions of our Declaration of Rights, which parallel the federal Bill of Rights. *State v. Anderson*, 910 P.2d 1229, 1234-42 (Utah

1996); *State v. Poole*, 871 P.2d 531, 534-36 (Utah 1994); *State v. Larocco*, 794 P.2d 460, 465-71 (Utah 1990).

Brigham City v. Stuart, 2005 UT 13, 519 Utah Adv. Rep 17, ¶ 10-13.

In the spirit of the invitation extended by the Supreme Court in *Stuart*, the Defendant asks this court to undertake an analysis of a Defendant's right to a trial by jury under the Utah State Constitution. The Defendant urges this court to evaluate a Defendant's right to a jury trial not simply based on the level of punishment or imprisonment which may be imposed, as the Federal Courts have done, but rather based on the nature of the charges against the Defendant and the resulting impingements on a Defendant's rights and freedoms as a result of his arrest. Furthermore, the Defendant urges this court to find that the Defendant in this case was entitled to a trial by jury.

The Utah State Constitution Guarantees a Criminal Defendant a Right to a Jury Trial in All "Criminal Prosecutions"

It is a well settled principle of law that although a state constitution cannot strip a citizen of the constitutional protections guaranteed by the United States Constitution, a state constitution can provide for additional protections not included in the United States Constitution. With regard to the right to a jury trial, it is the position of the Defendant that the Utah State Constitution provides a criminal Defendant even more protection than the United States Constitution. Article I, Section 12 of the Utah State Constitution unambiguously provides that "In *criminal prosecutions* the accused shall have the right . .

. to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed . . .” Const. Art. 1, § 12. (emphasis added)

In this case, Despite having amended the charges against Mr. Fernandez from Misdemeanors to Infractions, the City continued the “criminal prosecution” of Mr. Fernandez for allegedly violating several “criminal statutes”. By amending the charges to Infractions the City sought to strip Mr. Fernandez of his constitutional right to have his case decided by a jury of his peers. Pursuant to Utah Rule 17(d) of the Utah Rules of Criminal Procedure, the Defendant properly demanded a trial by jury and insisted that his constitutional right to a jury trial pursuant to Article I, Section 12 of the Utah State Constitution be enforced.

Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure Violate Article I, Section 12 of the Utah State Constitution

In direct contradiction to Article I, Section 12 of the Utah State Constitution, Utah Code Ann. § 77-1-6(2)(e) provides that “No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, *in case of an infraction, upon judgment by a magistrate.*” (emphasis added) Likewise, Rule 17(d) of the Utah Rules of Criminal Procedure states that “(d) All other cases shall be tried without a jury unless the defendant makes written demand at least ten days prior to trial, or the court orders otherwise. *No jury shall be allowed in the trial of an infraction.*” (emphasis added) These provisions of Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure eliminating

the right to a jury trial in the case of an Infraction violate the Utah State Constitution and its guarantee of a criminal defendant's right to a jury trial in *all* criminal prosecutions.

Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure attempt to eliminate the requirement of a jury trial in the case of an Infraction. However, all of the remaining rights enumerated in Article I, Section 12 of the Utah State Constitution, including “the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf” and “the right to appeal in all cases” are extended to a Defendant charged with an Infraction. The only one of the rights set forth in Article I, Section 12 of the Utah State Constitution that the legislature and now the City have impermissibly attempted to take away is the right to a jury trial. This Court should resist any argument to do so based on the clear and unambiguous expression of the Utah State Constitution assuring a right to a jury trial in all criminal prosecutions.

At the time of the Bench Trial the Defendant in this case Still Remained the Subject of a Criminal Prosecution and was therefore Entitled to a Jury Trial Pursuant to Article I, Section 12 of the Utah State Constitution

In the present case, the Defendant was charged with several “crimes.” Each of the offenses or statutes which he was alleged to have violated are found in the ‘Utah Criminal Code.’ During the course of the case the prosecution maintained the charges as

Misdemeanor offenses until the verge of trial. The Defendant had properly demanded a trial by jury pursuant to Utah Code Ann. § 77-1-6(2)(e) and the case had been set for a jury trial on January 7, 2005. The Defendant had chosen to have his case tried to a jury at which time it would have been the prosecution's burden to prove his guilt beyond a reasonable doubt and the unanimous verdict of the jury would have been required to convict him. The prosecutor continued to proceed with the charges as misdemeanors until two days before the jury trial, when on January 5, 2005, the prosecutor filed an Amended Information reducing the charges to misdemeanors and requested that the court strike the jury trial and proceed with a bench trial. This amending of the charges is a poorly veiled effort by the prosecution to strip the Defendant of his right to have his case decided by a jury of his peers.

Despite the prosecution's motion to amend the charges in this case from Class B and C Misdemeanors to Infractions the Defendant still remained the subject of a criminal prosecution. To this day the arrest still appears on his criminal history and he was still subject to penalties for violating a criminal statute. The prosecution's motion to amend the charge in this case from misdemeanors to infractions did not change the criminal nature of the charges and therefore **all** of the rights of the criminally accused enumerated in Article I, Section 12 of the Utah State Constitution applied to the Defendant, including the right to a trial by jury.

To further support the Defendant's position that he was still the subject to a criminal prosecution and that he was entitled to a jury trial, the Defendant points out the

fact that on the night of the alleged incident, he was arrested, placed in handcuffs, and incarcerated at the Weber County Jail. The Defendant was later released after posting bond. As such, as a result of this alleged offense the Defendant's freedom was curtailed to a degree associated with a "criminal" offense as he was arrested and jailed. Under normal circumstances, a person suspected of committing an Infraction level offense is simply given a citation and upon signing a promise to appear they are allowed to go on their way.

In light of all of the circumstances surrounding this case, it is absurd to say that the amending of the charges to Infractions magically changed this from criminal case to something different. Looking at the totality of the circumstances, it is obvious that the amending of the charges to Infractions does not change the fact that the defendant had been arrested, jailed, and charged with several crimes, all of which are reflective of and associated with a "criminal prosecution."

CONCLUSION

As such, it is the position of the Defendant that the District Court lacked proper jurisdiction to hear this case. That the statutory scheme of jurisdiction of the Justice Courts and District Courts as applied in this case violated the Defendant's Equal Protection Rights under both the Utah Constitution and United States Constitution. Further, it is the position of the Defendant that the provisions of Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure eliminating the right to a


trial by jury in the case of an Infraction are unconstitutional and that he was guaranteed the right to a trial by jury in this case by the Utah State Constitution.

Therefore the Defendant moves this court to enter an order vacating the Defendant's convictions entered following the Bench Trial on January 5, 2005.

ORAL ARGUMENT REQUESTED

The Appellant requests oral argument in this matter pursuant to Rule 29(a) of the Utah Rules of Appellate Procedure. This is a matter raises several important constitutional issues and it is the position of the Appellant that the court could be significantly aided in its decision process by oral argument from the parties.

DATED this day, August 18, 2005.



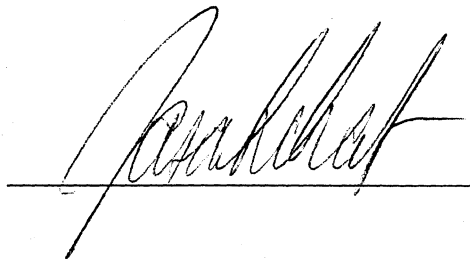
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CERTIFICATE OF SERVICE

I certify that on this August 18, 2005, I personally mailed true and correct copies
of the foregoing Brief of Appellant to the following:

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ADDENDA

Article I, Section 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.

o History for Constitution

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last revised: Monday, May 16, 2005

Article I, Section 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.

No History for Constitution

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[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

Last revised: Monday, May 16, 2005

U.S. Constitution: Fourteenth Amendment

Fourteenth Amendment - Rights Guaranteed Privileges and Immunities of Citizenship, Due Process and Equal Protection

Amendment Text | Annotations

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

77-1-6. Rights of defendant.

- (1) In criminal prosecutions the defendant is entitled:
 - (a) To appear in person and defend in person or by counsel;
 - (b) To receive a copy of the accusation filed against him;
 - (c) To testify in his own behalf;
 - (d) To be confronted by the witnesses against him;
 - (e) To have compulsory process to insure the attendance of witnesses in his behalf;
 - (f) To a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed;
 - (g) To the right of appeal in all cases; and
 - (h) To be admitted to bail in accordance with provisions of law, or be entitled to a trial within 30 days after arraignment if unable to post bail and if the business of the court permits.
- (2) In addition:
 - (a) No person shall be put twice in jeopardy for the same offense;
 - (b) No accused person shall, before final judgment, be compelled to advance money or fees to secure rights guaranteed by the Constitution or the laws of Utah, or to pay the costs of those rights when received;
 - (c) No person shall be compelled to give evidence against himself;
 - (d) A wife shall not be compelled to testify against her husband nor a husband against his wife; and
 - (e) No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, in case of an infraction, upon a judgment by a magistrate.

Enacted by Chapter 15, 1980 General Session

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last revised: Monday, May 16, 2005

77-25-2. Venue of prosecution by information.

Any prosecution by information, except in the case of a felony or class A misdemeanor, shall be commenced before a magistrate in the precinct of the county or municipality where the offense was alleged to have been committed, except as otherwise provided by law.

Enacted by Chapter 15, 1980 General Session

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last revised: Monday, May 16, 2005

78-5-103. Territorial jurisdiction -- Voting.

(1) The territorial jurisdiction of county justice courts extends to the limits of the precinct for which the justice court is created and includes all cities or towns within the precinct, except cities where a municipal justice court exists.

(2) The territorial jurisdiction of municipal justice courts extends to the corporate limits of the municipality in which the justice court is created.

(3) The territorial jurisdiction of county and municipal justice courts functioning as magistrates extends beyond the boundaries in Subsections (1) and (2):

(a) as set forth in Section **78-7-17.5**; and

(b) to the extent necessary to carry out magisterial functions under Subsection **77-7-23(2)** regarding jailed persons.

(4) For election of county justice court judges, all registered voters in the county justice court precinct may vote at the judge's retention election.

Amended by Chapter 21, 1999 General Session

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Last revised: Thursday, July 28, 2005

78-5-104. Jurisdiction.

(1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction, except those offenses over which the juvenile court has exclusive jurisdiction.

(2) Justice courts have jurisdiction of small claims cases under Title 78, Chapter 6, Small Claims Courts, if the defendant resides in or the debt arose within the territorial jurisdiction of the justice court.

Amended by Chapter 215, 1997 General Session

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last revised: Thursday, July 28, 2005

Rule 17. The trial.

(a) In all cases the defendant shall have the right to appear and defend in person and by counsel. The defendant shall be personally present at the trial with the following exceptions:

- (1) In prosecutions of misdemeanors and infractions, defendant may consent in writing to trial in his absence,
- (2) In prosecutions for offenses not punishable by death, the defendant's voluntary absence from the trial after notice to defendant of the time for trial shall not prevent the case from being tried and a verdict or judgment entered therein shall have the same effect as if defendant had been present, and
- (3) The court may exclude or excuse a defendant from trial for good cause shown which may include tumultuous, riotous, or obstreperous conduct.

Upon application of the prosecution, the court may require the personal attendance of the defendant at the trial.

(b) Cases shall be set on the trial calendar to be tried in the following order:

- (1) misdemeanor cases when defendant is in custody,
- (2) felony cases when defendant is in custody,
- (3) felony cases when defendant is on bail or recognizance, and
- (4) misdemeanor cases when defendant is on bail or recognizance.

(c) All felony cases shall be tried by jury unless the defendant waives a jury in open court with the approval of the court and the consent of the prosecution.

(d) All other cases shall be tried without a jury unless the defendant makes written demand at least ten days prior to trial, or the court orders otherwise. No jury shall be allowed in the trial of an infraction.

(e) In all cases, the number of members of a trial jury shall be as specified in Section 78-46-5, U.C.A. 1953.

(f) In all cases the prosecution and defense may, with the consent of the accused and the approval of the court, by stipulation in writing or made orally in open court, proceed to trial or complete a trial then in progress with any number of jurors less than otherwise required.

(g) After the jury has been impaneled and sworn, the trial shall proceed in the following order:

- (1) The charge shall be read and the plea of the defendant stated,
- (2) The prosecuting attorney may make an opening statement and the defense may make an opening statement or reserve it until the prosecution has rested,
- (3) The prosecution shall offer evidence in support of the charge,
- (4) When the prosecution has rested, the defense may present its case,
- (5) Thereafter, the parties may offer only rebutting evidence unless the court, for good cause, otherwise permits,
- (6) When the evidence is concluded and at any other appropriate time, the court shall instruct the jury, and
- (7) Unless the cause is submitted to the jury on either side or on both sides without argument, the prosecution shall open the argument, the defense shall follow and the prosecution may close by responding to the defense argument. The court may set reasonable limits upon the argument of counsel for each party and the time to be allowed for argument.
- (h) If a juror becomes ill, disabled or disqualified during trial and an alternate juror has been selected, the case shall proceed using the alternate juror. If no alternate has been selected, the parties may stipulate to proceed with the number of jurors

remaining. Otherwise, the jury shall be discharged and a new trial ordered.

(i) Questions by jurors. A judge may invite jurors to submit written questions to a witness as provided in this section.

(1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.

(2) If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.

(3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.

(j) When in the opinion of the court it is proper for the jury to view the place in which the offense is alleged to have been committed, or in which any other material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. The officer shall be sworn that while the jury are thus conducted, he will suffer no person other than the person so appointed to speak to them nor to do so himself on any subject connected with the trial and to return them into court without unnecessary delay or at a specified time.

(k) At each recess of the court, whether the jurors are permitted to separate or are sequestered, they shall be admonished by the court that it is their duty not to converse among themselves or to converse with, or suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

(l) Upon retiring for deliberation, the jury may take with them the instructions of the court and all exhibits which have been received as evidence, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

(m) When the case is finally submitted to the jury, they shall be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Except by order of the court, the officer having them under his charge shall not allow any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

(n) After the jury has retired for deliberation, if they desire to be informed on any point of law arising in the cause, they shall inform the officer in charge of them, who shall communicate such request to the court. The court may then direct that the jury be brought before the court where, in the presence of the defendant and both counsel, the court shall respond to the inquiry or advise the jury that no further instructions shall be given. Such response shall be recorded. The court may in its discretion respond to the inquiry in writing without having the jury brought before the court, in which case the inquiry and the response thereto shall be entered in the record.

(o) If the verdict rendered by a jury is incorrect on its face, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

(p) At the conclusion of the evidence by the prosecution, or at the conclusion of all the evidence, the court may issue an order dismissing any information or indictment, or any count thereof, upon the ground that the evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

ADVISORY COMMITTEE NOTE

Jason Schatz (Bar #9969)
Schatz & Anderson, LLC
Attorneys for Defendant
356 E. 900 S.
Salt Lake City, UT 84111
Phone (801) 746-0447
Fax (801) 579-0606

SECOND DISTRICT COURT COURT,
WEBER COUNTY, STATE OF UTAH

OGDEN CITY,	:	MOTION TO DISMISS/TRANSFER
Plaintiff,	:	
v.	:	CASE NO. 041905235
Dennis Fernandez,	:	JUDGE JONES
Defendant.	:	

COMES NOW, the Defendant, Dennis Fernandez, by and through his attorney, Jason Schatz, and hereby moves this court to dismiss the above entitled case in this court or in the alternative to transfer this case to the Weber County Justice Court. Defendant's motion is based on the following:

It is the position of the Defendant that although the District Courts in the State of Utah have jurisdiction to hear cases involving offenses classified as Class B or Class C Misdemeanors and infractions, the proper court in which to file the above entitled case is the Weber County Justice Court. Pursuant to Utah's statutory scheme of District and Justice Courts, cases

involving offenses classified as class B Misdemeanors or less are to be filed in the Justice Courts. Utah Code § 77-25-2 states that “Any prosecution by information, except in the case of a felony or class A Misdemeanor, *shall be commenced before a magistrate in the precinct of the county or municipality* where the offense was alleged to have been committed, except as otherwise provided by law.” (emphasis added) Furthermore, Utah Code § 78-5-104 states that “(1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed *within their territorial jurisdiction*, except those offense over which the juvenile court has exclusive jurisdiction.” (emphasis added) Clearly a justice court would have original jurisdiction to hear this case because the offenses alleged in this case were originally filed as Class B and C misdemeanors (All charges have since been amended to Infractions pursuant to the amended Information filed on January 5, 2005, by the Ogden City Prosecutor’s Office) and therefore fall under the jurisdiction of the justice courts as set forth in Utah Code § 78-5-104 and pursuant to Utah Code § 77-25-2 the case should be filed in a justice court.

Although the City of Ogden has not established a justice court, there is available a justice court with proper jurisdiction to hear this case. Utah Code § 78-5-103 defines the territorial jurisdiction of the justice courts as follows: “(1) The territorial jurisdiction of county justice courts extends to the limits of the precinct for which the justice court is created and *includes all cities or towns within the precinct, except cities where a municipal justice court exists.*”(emphasis added) Pursuant to this statute, the jurisdiction of the Weber County Justice court extends to all cities in Weber County, including Ogden, and since Ogden has not

established a municipal justice court, the Weber County Justice Court maintains its jurisdiction over misdemeanors cases, Class B or less, alleged to have been committed in Ogden City.

THEREFORE based on the above, the Defendant respectfully request that the above entitled case be dismissed in this court or in the alternative that the case be transferred to the Weber County Justice Court for further proceedings.

DATED this 5th day of January, 2005.

A handwritten signature in black ink, appearing to read 'Jason Schatz', written over a horizontal line.

Jason Schatz
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 5th day of January, 2005, I personally mailed and faxed a true and correct copy of the foregoing Motion to Dismiss/Transfer:

Clerk of the Court
SECOND DISTRICT COURT COURT
2525 Grant Ave.
Ogden, UT 84401

Paul Olds
OGDEN CITY ATTORNEY
2525 Grant Ave., 1st Floor
Ogden, UT 84401

A handwritten signature in cursive script, appearing to read "Peter Nelson", is written over a horizontal line.

Jason Schatz (Bar #9969)
Schatz & Anderson, LLC
Attorneys for Defendant
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Phone (801) 746-0447
Fax (801) 579-0606

SECOND DISTRICT COURT COURT,
WEBER COUNTY, STATE OF UTAH

OGDEN CITY,	:	RENEWED DEMAND FOR JURY TRIAL
Plaintiff,	:	
v.	:	
	:	CASE # 041902564
Dennis Fernandez,	:	
Defendant.	:	JUDGE JONES

COMES NOW, the defendant, Dennis Fernandez, by and through his counsel of record, Jason Schatz, and hereby renews his demand for a jury trial in the above entitled matter.

STATEMENT OF CASE

The Defendant was originally charged on May 10, 2004, by Formal Information filed by the Ogden City Prosecutor's Office, with 1 count of Simple Assault, a Class B Misdemeanor, 1 count of Domestic Violence in the Presence of a Child, a Class B Misdemeanor, and 1 count of Intoxication, a Class C Misdemeanor. At the Pre-trial Conference in this matter held, this matter was set for a Jury Trial on January 7, 2005. On January 5th, 2005, the Ogden City Prosecutor, filed an Amended Information amending all 3 counts to Infractions.

ARGUMENT

The Defendant now renews his demand for a trial by jury and moves this Court to go forward with the Jury Trial on the 3 counts charged as Infractions as scheduled on January 7, 2005. Defendant's Renewed Demand for Jury Trial in this matter is based on the following:

The Utah State Constitution Guarantees a Criminal Defendant a Right to a Jury Trial in All "Criminal Prosecutions"

It is a well settled principle of law that although a state constitution cannot strip a citizen of the constitutional protections guaranteed by the United States Constitution, a state constitution can provide for additional protections not included in the United States Constitution. With regard to the right to a jury trial, it is the position of the Defendant that the Utah State Constitution provides a criminal Defendant even more protection than the United States Constitution. Article I, Section 12 of the Utah State Constitution unambiguously provides that "In *criminal prosecutions* the accused shall have the right . . . to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed" Const. Art. 1, § 12. (emphasis added)

Despite having amended the charges against Mr. Fernandez from Misdemeanors to Infractions, the City continues the "criminal prosecution" of Mr. Fernandez for allegedly violating several "criminal statutes". By Amending the charge to an Infraction the City has sought to strip Mr. Fernandez of his constitutional right to have his case decided by a jury of his peers. Pursuant to Utah Rule 17(d) of the Utah Rules of Criminal Procedure, the Defendant hereby demands a trial by jury and insists that his constitutional right to a jury trial pursuant to Article I, Section 12 of the Utah State Constitution be enforced.

Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure Violate Article I, Section 12 of the Utah State Constitution

In direct contradiction to Article I, Section 12 of the Utah State Constitution, Utah Code Ann. § 77-1-6(2)(e) provides that “No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, *in case of an infraction, upon judgment by a magistrate.*” (emphasis added) Likewise, Rule 17(d) of the Utah Rules of Criminal Procedure states that “(d) All other cases shall be tried without a jury unless the defendant makes written demand at least ten days prior to trial, or the court orders otherwise. *No jury shall be allowed in the trial of an infraction.*” (emphasis added) These provisions of Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure eliminating the right to a jury trial in the case of an Infraction violate the Utah State Constitution and its guarantee of a criminal defendant’s right to a jury trial in *all* criminal prosecutions.

Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure attempt to eliminate the requirement of a jury trial in the case of an Infraction. However, all of the remaining rights enumerated in Article I, Section 12 of the Utah State Constitution, including “the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf” and “the right to appeal in all cases” are extended to a Defendant charged with an Infraction. The only one of the rights set forth in Article I, Section 12 of the Utah State Constitution that the legislature and now the City have impermissibly attempted to take away is the right to a jury trial. This Court should resist any argument to do so based on the clear and

unambiguous expression of the Utah State Constitution assuring a right to a jury trial in all criminal prosecutions.

The Defendant in this case Still Remains the Subject of a Criminal Prosecution and is therefore Entitled to a Jury Trial Pursuant to Article I, Section 12 of the Utah State Constitution

In the present case, the Defendant is currently charged with a “crime” and the Defendant has decided to exercise his right to a criminal trial in which it will be the prosecution’s burden to prove his guilt beyond a reasonable doubt. The question at issue is whether he will be tried before a judge or a jury. The Defendant is seeking a jury trial in this matter and has not waived his right to a jury trial pursuant to Utah Code Ann. § 77-1-6(2)(e).

Despite the prosecution’s motion to amend the charges in this case from misdemeanors to infractions the Defendant still remains the subject of a criminal prosecution. The arrest still appears on his criminal history and he is still subject to penalties for violating a criminal statute. The prosecution’s motion to amend the charge in this case from misdemeanors to infractions does not change the criminal nature of the charges and therefore **all** of the rights of the criminally accused enumerated in Article I, Section 12 of the Utah State Constitution apply, including the right to a trial by jury.

To further support the Defendant’s position that he is still the subject to a criminal prosecution in which he is entitled to a jury trial, the Defendant points out the fact that on the night of the alleged incident, he was arrested, placed in handcuffs, and incarcerated at the Weber County Jail. The Defendant was later released after posting bond. As such, as a result of this alleged offense the Defendant’s freedom was curtailed to a degree associated with a “criminal” offense as he was arrested and jailed. Under normal circumstances, a person suspected of

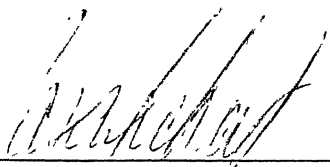
committing an Infraction level offense is simply given a citation and upon signing a promise to appear they are allowed to go on their way.

CONCLUSION

Arguably, the City's action to amend the charges from Misdemeanors to Infractions, despite the fact that code sections he is alleged to have violated specifically state that these violations are Misdemeanors, is nothing more than attempt to deny Mr. Fernandez his right under the Utah State Constitution to a trial by jury in this case. The provisions of Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure eliminating the right to a jury trial in the case of an Infraction are in direct contradiction to the unambiguous and superseding language of the Utah State Constitution and therefore are unconstitutional.

THEREFORE the Defendant hereby renews his demand for a trial by jury pursuant to Article I, Section 12 of the Utah State Constitution. As such, the Defendant moves this court to proceed with the Jury Trial scheduled on January 7, 2005, on all 3 counts listed above as Infractions as amended in the Amended Information filed by the Ogden City Prosecutor's Office on January 5, 2005. The Defendant further moves this court to find that the provisions of Utah Code Ann. § 77-1-6(2)(e) and Rule 17(d) of the Utah Rules of Criminal Procedure eliminating the right to a jury trial in the case of an Infraction violate Article I, Section 12 of the Utah State Constitution and its guarantee of a criminal defendant's right to a jury trial in criminal prosecutions.

DATED this 5th day of January, 2005.



Jason Schatz
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 5th day of January, 5, I personally faxed and mailed a true and correct copy of the foregoing Renewed Demand for Jury Trial to the following:

Judge Jones
SECOND DISTRICT COURT COURT
2525 Grant Ave.
Ogden, UT 84401

Paul Olds
OGDEN CITY ATTORNEY
2525 Grant Ave., 1st Floor
Ogden, UT 84401

